

California Regional Water Quality Control Board
Santa Ana Region

October 25, 2002

ITEM: 21

SUBJECT: Administrative Civil Liability Complaint No. R8-2002-0072, Yucaipa
Glen LLC, Yucaipa, San Bernardino County

BACKGROUND

On September 26, 2002, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2002-0072 (copy attached) to Yucaipa Glen LLC (Yucaipa Glen) for alleged violations of the State's General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$47,300 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Yucaipa Glen.

ACL No. R8-2002-0072 was issued by the Executive Officer to Yucaipa Glen for failing to develop and implement an effective Storm Water Pollution Prevention Plan, and for discharging unauthorized non-storm water to the storm drain system.

DISCUSSION

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Federal Clean water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$700), with the State Water Resources Control Board. Yucaipa Glen filed an NOI and obtained coverage under the General Permit, WDID No. 836S313226. Yucaipa Glen's 59-acre construction site is located in the City of Yucaipa, along East Fir Street between Fremont and Jefferson Streets.

On April 4, 2002, Board staff inspected the site and noted that inadequate best management practices (BMPs) were implemented; debris and dirt were on the streets. A site-specific Storm Water Pollution Prevention Plan (SWPPP) was not available at the site. Board staff requested the site superintendent to immediately implement appropriate BMPs, and to develop and implement a SWPPP and retain a copy of the SWPPP at the site. A significant amount of sediment was observed on East Fir Street and other streets within the project site. The sources of sediment included tracking from construction equipment traffic and soil erosion from the graded areas. The sandbags used at the site were deteriorated and were not

properly installed or maintained. There was evidence of sediment discharge to the local storm drains. The construction superintendent was informed that the General Permit required that a site-specific SWPPP be prepared and implemented prior to soil disturbance. He was further informed that the SWPPP must remain on site while the site is under construction, commencing with the initial mobilization and ending with the termination of coverage under the General Permit. A Notice of Violation was issued to Yucaipa Glen on April 9, 2002.

On July 2, 2002, Board staff re-inspected the site and observed similar violations. A site-specific SWPPP and monitoring program were not available at the site. There were dirt piles and a lot of sediment on the streets. The sandbags were not properly deployed or maintained. During the inspection, non-storm water discharges, including concrete washwater, were seen flowing into an unprotected storm drain near the intersection of Fremont and East Fir Street. Board staff once again requested the superintendent to correct these problems.

On July 23, 2002, Board staff conducted another inspection of the site. The construction superintendent was not onsite. During the inspection, staff observed no improvements in the implementation of BMPs and the site conditions were similar to conditions observed during previous site inspections.

On September 18, 2002, Board staff observed another non-storm water discharge into an unprotected catch basin. The construction superintendent was not available at the site. Board staff left a voice mail message for the site superintendent requesting the superintendent to return his call to discuss the problems at the site. No return telephone call was received.

After repeated requests to improve the site conditions, Yucaipa Glen failed to implement proper BMPs and continued to discharge non-storm water to the storm drain systems in violation of the General Permit. On September 26, 2002, the Executive Officer issued the ACL.

Section 13385(a)(1) provides that any person who violates Water Code Section 13376 (discharging pollutants to waters of the United States without a permit) shall be civilly liable and Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

Yucaipa Glen is alleged to have violated Water Code Section 13376 and Provisions A.2 and C.2 and C.4 of the General Permit. Yucaipa Glen violated C.2 by failing to properly develop and implement an effective SWPPP and violated A.2 by discharging non-storm water, containing pollutants, to waters of the United States from the construction site. Pursuant to the water Code Section 13385 (a) (2), civil liability may be imposed for the

preceding violations. The maximum potential liability for these violations is \$ 7,270,000 (see the ACL for details).

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

Nature, Circumstances, Extent and Gravity of Violation

By submitting the NOI, the discharger certified that they would comply with the provisions of the permit including the development and implementation of a SWPPP and a Monitoring Program. They were also aware of the prohibitions of discharge of unauthorized non-storm water and storm water containing pollutants from the subject site.

A site-specific SWPPP and monitoring program were not developed and implemented. Due to the facility's lack of adequate BMPs, poor housekeeping practices, and lack of maintenance of BMPs, sediment-laden storm water and non-storm water containing pollutants were discharged to local storm drains. The storm drains in the area are tributary to Wilson Creek.

Yucaipa Glen ignored repeated written and oral requests for corrective measures at the site.

Yucaipa Glen's inaction and failure to provide adequate employee training and oversight of its operations resulted in the discharge of pollutants into the waters of the United States.

Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

Prior History of Violations

The City's inspection records indicate that Yucaipa Glen was in violation of local ordinances and the City ordered Yucaipa Glen to come into compliance as early as December 2001. Yucaipa Glen has not been responsive to Board staff's efforts to bring the site into compliance. Board staff issued a Notice of Violation on April 9, 2002 for several violations of the General Permit including lack of a SWPPP and inadequate implementation of BMPs. Despite the Notice of Violation and several oral warnings, Yucaipa Glen was not in compliance during subsequent inspections of the site on July 2, 2002, July 23, 2002, and September 18, 2002. Yucaipa Glen failed to correct the violations.

Degree of Culpability

The discharger violated the Clean Water Act and the California Water Code by discharging unauthorized non-storm water containing pollutants and by not complying with the terms and conditions of the General Permit by failing to develop and implement a site-specific

SWPPP and Monitoring Program. Yucaipa Glen ignored repeated written and oral warnings from the City and Board staff.

Economic Benefit or Savings, if any Resulting from the Violations

By failing to effectively develop a SWPPP and implement BMPs Yucaipa Glen gained an economic advantage over its competitors. Economic savings from these violations are estimated as follows:

Yucaipa Glen saved approximately \$5,000 by not developing a SWPPP (cost of developing a SWPPP) and approximately \$29,500 by not implementing adequate BMPs (based on \$1,000 per acre, approximately 50% of the total site (29.5 acres) under construction).

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

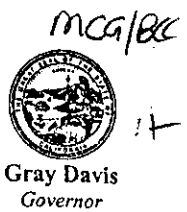
RECOMMENDATION

After consideration of all the above factors, staff recommends that the Board affirm the assessment of \$47,300, specified in the Administrative Civil Liability Complaint issued by the Executive Officer on September 26, 2002.



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

September 26, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Steve Selinger
Yucaipa Glen LLC.
11611 San Vicente Blvd., Suite # 605
Los Angeles, CA 90049

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2002- 0072, TRACT 15967, YUCAIPA, SAN BERNARDINO COUNTY

Dear Mr. Selinger:

We are enclosing a certified copy of Complaint No. R8-2002-0072 proposing administrative civil liability of \$47,300 for violations of the State's General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ, NPDES No. CAS000002, WDID No. 836S313226. An invoice and a preprinted envelope are also enclosed.

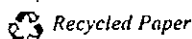
If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on October 25, 2002. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board will not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check for \$47,300. The check or money order should be made payable to the State Water Resources Control Board. The payment, the Waiver Form and the bottom portion of the invoice should be mailed to the State Board in the enclosed preprinted envelope.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to October 3, 2002. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;
2. Your ability to pay the proposed assessment;
3. Any prior history of violations;

California Environmental Protection Agency



Yucaipa Glen LLC.
Mr. Steve Selinger

2 -

September 26, 2002

4. Your degree of culpability;
5. Economic benefit or saving; and
6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Ms. Milasol C. Gaslan at 909-782-4419 or Mr. Michael Adackapara at 909-782-3238. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at 916-341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2002-0072, Waiver Form, Invoice and Envelope

Cc with enclosures:

Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Jorge Leon, State Water Resources Control Board, Office of Chief Counsel
Tom Heutteman, US-EPA, Region 9 (WTR-7)
San Bernardino County, Storm Water Program – Naresh Varma, NPDES
Coordinator
City of Yucaipa – Fred Hawkins, NPDES Coordinator

In the matter of:

Yucaipa Glen LLC.

11611 San Vicente Blvd., Suite # 605)

Los Angeles, CA 90049

Attn: Steve Selinger

Complaint No. R8-2002-0072

for

Administrative Civil Liability

WAIVER OF HEARING

I agree to waive Yucaipa Glen LLC's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2002-0072. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$47,300. I understand that I am giving up Yucaipa Glen LLC's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Yucaipa Glen LLC

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2002-0072
)	for
Yucaipa Glen LLC.)	Administrative Civil Liability
11611 San Vicente Blvd., Suite # 605))	
Los Angeles, CA 90049)	
)	
<u>Attn: Steve Selinger</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Yucaipa Glen LLC. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on October 25, 2002, at the City Council Chambers, 815 W. 6th Street, Corona. Yucaipa Glen or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Yucaipa Glen is alleged to have violated Water Code Section 13376 and Provisions A.2, C.2 and C.4 of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (General Permit). Yucaipa Glen failed to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and discharged non-storm water containing pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385 (a)(1) and (a)(2), civil liability may be imposed for the preceding violations.
5. Runoff from the Yucaipa Glen construction site (Tract 15967) in the City of Yucaipa is regulated under the State's General Permit, WDID No. 8 36S313226.
6. This complaint is based on the following facts:
 - a) On April 4, 2002, Board staff conducted a routine inspection of the construction site located on East Fir Street, Yucaipa. The site-specific Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Programs were not available at the site. A significant amount of sediment was observed on East Fir Street and

other streets within the project. The sources of sediment included tracking due to construction equipment traffic and soil erosion from the graded areas. Deteriorated and ineffectively placed sandbags were also observed. Inadequate Best Management Practices (BMP) implementation and maintenance resulted in the transport of sediments to the local storm drain. The construction superintendent was informed that the General Permit required that a site-specific SWPPP be prepared and implemented prior to soil disturbance. He was further informed that the SWPPP must remain on site while the site is under construction, commencing with the initial mobilization and ending with the termination of coverage under the General Permit.

- b) On April 9, 2002, a Notice of Violation was sent to Yucaipa Glen that outlined the aforementioned violations and the requirement to prevent any further transport of pollutants to the storm drain systems. Yucaipa Glen was requested to immediately address the problems and to submit a copy of the site-specific SWPPP and to describe the actions taken to address the identified problems by April 24, 2002.
- c) On April 22, 2002, Regional Board staff received a letter from Mr. Stephen Selinger, stating that Mr. Robert Cowin, the construction superintendent at East Fir Street, Yucaipa (Tract # 15967) would be providing all information requested in the letter dated April 4, 2002. Mr. Robert Cowin failed to provide the requested information by the stipulated date.
- d) On May 30, 2002, Board staff reminded Mr. Robert Cowin to provide the requested information and to implement proper BMPs to control and prevent pollutants on site. Mr. Robert Cowin submitted his response via facsimile stating that all problems had been fixed. A copy of the site-specific SWPPP was not provided with his response.
- e) On July 2, 2002, Board staff re-inspected the site and found similar violations. A site-specific SWPPP and monitoring program were not available at the site. Loose dirt and sediments were observed on all streets. Sandbags placed around storm drain catch basins were inadequate to handle even authorized non-storm water discharges. Piles of loose dirt were stored on streets without proper BMP implementation. Watermarks along streets and catch basins indicated that there had been sediment-laden water discharges into the storm drain system.
- f) While Board staff was discussing these violations with the construction superintendent in his trailer at the site, concrete construction workers washed East Fir Street using a hose connected to a nearby fire hydrant. Sediments that had accumulated along the curb were carried into the adjacent storm drain. The lack of BMP maintenance and inadequate implementation allowed this sediment-laden discharge to enter the storm drain system and ultimately the receiving waters.
- g) Board staff advised Mr. Robert Cowin, the construction superintendent, to immediately stop flushing the street and to implement adequate BMPs to

eliminate or reduce the amount of sediment entering the storm drain system. Board staff collected a grab sample of the runoff entering the storm drain. Mr. Cowin was told that an acceptable alternative would be thorough sweeping followed by judicious application of water while ensuring that all catch basins are sufficiently protected to prevent introduction of sediment to the storm drain system.

- h) On July 23, 2002, Board staff re-inspected the site to evaluate improvements in the implementation of BMPs. During the inspection, staff observed no improvements in the implementation of BMPs. No facility representative was at the site during the site visit.
8. Yucaipa Glen is alleged to have violated Water Code Section 13376 and Provisions A.2 and C.2 and C.4 of the General Permit.

A) California Water Code Section 13376 provides:

"Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260."

B) The General Permit Provision A.2 provides:

"Discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3."

Special Provision for Construction Activity C.3 provides:

"Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Whenever feasible, alternatives which do not result in discharge of non-storm water shall be implemented in accordance with Section A.9 of the SWPPP requirements."

C) The General Permit Provision C.2 provides:

"All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall

implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT¹ performance standard."

D) The General Permit Provision C.4 provides:

"All dischargers shall develop and implement a monitoring program and reporting plan in accordance with Section B: Monitoring Program and Reporting Requirements."

9. Yucaipa Glen violated the General Permit by failing to develop and properly implement an effective SWPPP and monitoring program. Yucaipa Glen also violated the General Permit by discharging non-storm water containing pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385 (a)(1) and (a)(2), civil liability may be imposed for the preceding violations.
10. Section 13385(a)(1) provides that any person who violates Water Code Section 13376 shall be civilly liable and Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
11. Construction at the site took place without the development and implementation of a site-specific SWPPP and monitoring program between July 6, 2000 and July 2, 2002, or 727 days.
12. The sediment laden non-storm water discharged to the storm drain system from the site was estimated to be 2,000 gallons.
13. Pursuant to Section 13385(c), the total maximum assessment for which Yucaipa Glen is civilly liable is \$7,270,000 (\$10,000 for each day of violation for the violations cited in paragraph 10, above) and an additional \$10,000 based on the estimated discharge (2000-1,000 = 1,000 gallons @\$10 per gallon) for the violation cited in Paragraph 11, above.
14. Yucaipa Glen saved approximately \$5,000 by not developing a SWPPP for the construction site. Yucaipa Glen also saved approximately \$29,500 by not implementing adequate BMPs at the site (59 acres @ \$1,000/acre for 50% project completion). Board staff costs for investigating this incident were approximately \$2,800 (40 hours at \$70/hour). These factors were considered in assessing the penalty proposed in Paragraph 15, below.
15. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and

¹ BAT is the acronym for Best Available Technology; BCT is the acronym for Best Conventional Technology

gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table on the following page. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Yucaipa Glen in the amount of \$47,300 for the violations cited above.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>A site-specific SWPPP and monitoring program were not developed and implemented. Due to facility's lack of adequate best management practices (BMPs) implementation, sediment-laden storm water and non-storm water discharge occurred periodically and entered the storm drain system. Photos taken and a sample collected at the site indicated muddy water discharge. Sediment-laden non-storm water was observed entering the storm drain. The storm drain discharges into Wilson Creek.</p> <p>Yucaipa Glen ignored repeated written and oral requests for corrective measures at the site.</p> <p>Yucaipa Glen's inaction and failure to provide adequate employee training and oversight of its operations led to inadequate BMP implementation and caused pollutants to be discharged into the waters of the US.</p>
B. Culpability	<p>The discharger violated the terms of the General Permit by failing to develop a site-specific SWPPP and monitoring program. The discharger did not implement adequate BMPs and discharged polluted non-storm water.</p>
C. Economic Benefit or Savings	<p>Yucaipa Glen saved approximately \$5000 by not developing SWPPP and approximately \$29,500 by not implementing adequate BMPs at the site during the period of construction.</p>
D. Prior History of Violations	<p>Yucaipa Glen has not been responsive to Regional Board staff's efforts to bring the site into compliance. A Notice of Violation was issued by Board staff on April 9, 2002 for several violations of the General Permit including lack of a SWPPP and inadequate implementation of BMPs. Despite the Notice and several oral requests, Yucaipa Glen was not in compliance during subsequent inspections of the site on July 2, 2002 and July 23, 2002.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 40 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$2800).</p>
F. Ability to pay	<p>The discharger has not provided any information to indicate that it is unable to pay the proposed amount.</p>

September 26, 2002

The total maximum liability for the violations of the General Permit is \$7,270,000. After consideration of the above factors, the Executive Officer proposes civil liability be imposed on Yucaipa Glen in the amount of \$47,300 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

Yucaipa Glen may waive its right to a hearing. If you choose to do so, please sign the attached waiver and return it, together with a check or money order for \$47,300 and the bottom portion of the invoice to the State Water Resources Control Board in the enclosed preprinted envelope.

If you have any questions, please contact Ms. Milasol C. Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238, or contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

9/26/02
Date

Gerard J. Thibeault
Gerard J. Thibeault
Executive Officer



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

*The energy challenge facing California is real.
Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>*

Gray Davis
Governor

To:
YUCAIPA GLEN LLC.
11611 SAN VICENTE BLVD, STE605
LOS ANGELES, CA 90049
ATTN: STEVE SELINGER

Invoice No: 23469
Invoice Date: 09/26/2002
Enforcement Action ID: 58074

INVOICE

Description	Amount	Due Date
32093 LIABILITY AMOUNT	\$47,300.00	10/26/2002
TOTAL AMOUNT DUE		\$47,300.00

California Environmental Protection Agency



Retain above portion for your records

Please return bottom portion with your payment

YUCAIPA GLEN LLC.
11611 SAN VICENTE BLVD, STE605
LOS ANGELES, CA 90049
ATTN: STEVE SELINGER

Make your check payable to:

State Water Resources Control Board

Description	Amount	Due Date
32093 LIABDUE	\$47,300.00	10/26/2002
TOTAL AMOUNT DUE		\$47,300.00

Mail payment to:

SWRCB ACCOUNTING
ATTN: ENFORCEMENT
P. O. Box 100
SACRAMENTO, CA 95812-0100

Amount Enclosed: \$ _____

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK: 23469

Invoice Date: 09/26/2002
Enforcement Action ID: 58074